ITED
TIONS

A

General Assembly

Distr.
LIMITED

A/AC.249/L.10
27 August 1996

ORIGINAL: ENGLISH

PARATORY COMMITTEE ON THE
STABLISHMENT OF AN
NTERNATIONAL CRIMINAL COURT
30 August 1996

DRAFT REPORT OF THE PREPARATORY COMMITTEE

Rapporteur: Mr. Jun YOSHIDA (Japan)

II. ORGANIZATION AND METHOD OF WORK

The work of the Preparatory Committee during its March-April session llowed the programme suggested by the Bureau and focused on the following estions: scope of jurisdiction and definition of crimes, at its 1st to 6th etings, on 25, 26 and 27 March; general principles of criminal law, at its 7th 10th meetings, on 28 and 29 March; complementarity, at its 11th to 14th etings, on 1 and 2 April; trigger mechanism, at its 15th to 18th meetings, on and 4 April; and cooperation between the court and national jurisdictions, at s 19th to 23rd meetings, on 8, 9 and 10 April. A summary of the discussions reflected in chapter III of the present report.

During the Committee's consideration of the above questions, delegations t forward various suggestions and proposals, some of which were in written rm. For the purpose of illustrating some of the major issues involved, they re brought together and compiled under the following headings: general inciples of criminal law (A/AC.249/CRP.9); complementarity /AC.249/CRP.9/Add.1); trigger mechanism (A/AC.249/CRP.9/Add.2 and 3); and operation between the court and national jurisdictions (A/AC.249/CRP.9/Add.5) ee annexes II-V to the present report). These compilations were by no means haustive in their inclusion of all suggestions and proposals put forward by e delegations; delegations were encouraged to submit additions to the cretariat for inclusion. The Committee did not discuss these papers and does t wish to prejudge the future positions of delegations.

. With respect to the definition of crimes, a series of Chairman's informal xts was issued in a document (A/AC.249/CRP.9/Add.4) under the following adings: genocide, aggression, war crimes and crimes against humanity (see

-22105 (E) 280896 290896

/...

annex I to the present report). The document also included a compilation of proposals and suggestions submitted by delegations. These are also illustrative texts which are not exhaustive and do not necessarily reflect any general views on the debate. The Committee did not discuss the document.

11. The work of the Preparatory Committee during its August session followed the programme suggested by the Bureau. To guide the discussion, the Chairman prepared lists of questions which were formulated in connection with specific articles of the draft statute prepared by the International Law Commission. The main topics considered were: procedural questions, fair trial and rights of the accused at its 33rd to 36th meetings on 15, 16 and 19 August 1996; organizational questions (composition and administration of the Court) at its 37th to 39th meetings, on 20 and 21 August 1996; and the establishment of the Court and its relationship with the United Nations at its 42nd and 43rd meetings, on 26 August 1996. A summary of the discussions is reflected in chapter III of the present report.

12. At the invitation of the Preparatory Committee, the Prosecutor's Office of the International Tribunal for the Former Yugoslavia presented, in an informal meeting, a statement on its work and explanation, which were followed by an exchange of views with the representatives of the Tribunal.

13. During its August session, the following written proposals were submitted:

A/AC.249/L.2	Draft set of rules of procedure and evidence for the Court: working paper submitted by Australia and the Netherlands
A/AC.249/L.3	Draft statute: working paper submitted by France
A/AC.249/L.4	Applicable law and general principles of law: working paper submitted by Canada
A/AC.249/L.5	International cooperation and judicial [mutual] assistance: working paper submitted by South Africa and Lesotho
A/AC.249/L.6	Rules of procedure: working paper submitted by Argentina
A/AC.249/L.7	Tentative draft on procedure: working paper submitted by Japan
A/AC.249/L.8	Proposals on the organization of the Court: working paper submitted by Japan
A/AC.249/WP.1	Proposal submitted by Germany for article 26
A/AC.249/WP.2	Proposal submitted by Singapore for articles 26, 27, 29 and 33
A/AC.249/WP.3	Proposal submitted by Switzerland for articles 34 and 36
A/AC.249/WP.4	Proposal submitted by Switzerland for articles 9 and 26 to 29
A/AC.249/WP.5	Proposal submitted by the United States of America on general principles of criminal law

A/AC.249/WP.6	Proposal submitted by the Netherlands for articles 5, 27, 37, 38, 44 and 48
A/AC.249/WP.7	Proposal submitted by Singapore for article 38
A/AC.249/WP.8	Proposal submitted by New Zealand for article 41
A/AC.249/WP.9	Proposal submitted by Switzerland for article 37
A/AC.249/WP.10	Proposal submitted by Austria for articles 26 to 29, 34, 36 and 51
A/AC.249/WP.11	Proposal submitted by Egypt for article 43
A/AC.249/WP.12	Proposal submitted by Denmark, Finland, Malawi, New Zealand, Nigeria, Norway and Sweden for articles 6(5) and 12
A/AC.249/WP.13	Proposal submitted by Singapore for articles 45 and 48
A/AC.249/WP.14	Proposal submitted by Japan on international cooperation and judicial assistance
A/AC.249/WP.15	Proposal submitted by the United States for part 7
A/AC.249/WP.16	Proposal submitted by Argentina and Canada for articles 38, 38 bis, 41 and 43
A/AC.249/WP.17	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland for articles 5, 6, 9 and 12
A/AC.249/WP.18	Proposal submitted by Austria for articles 9 and 11
A/AC.249/WP.19	Proposal submitted by Denmark for article 6
A/AC.249/WP.20	Proposal submitted by Portugal for article 6
A/AC.249/WP.21	Proposal submitted by Canada for article 45
A/AC.249/WP.22	Proposal submitted by the United States for article 6
A/AC.249/WP.23	Proposal submitted by the United Kingdom for article 6
A/AC.249/WP.24	Proposal submitted by Singapore for article 6
A/AC.249/WP.25	Proposal submitted by China for article 6(3), (5) and (6)
A/AC.249/WP.26	Proposal submitted by Japan for articles 6 and 13
A/AC.249/WP.27	Proposal submitted by Switzerland for articles 6, 8 and 9
A/AC.249/WP.28	Proposal submitted by Austria for article 9

A/AC.249/WP.29	Proposal submitted by Singapore and Trinidad and Tobago for article 6
A/AC.249/WP.30	Proposal submitted by Finland for articles 6, 12 and 19
A/AC.249/WP.31	Proposal submitted by Italy for article 37
A/AC.249/WP.32	Proposal submitted by Singapore for articles 8 to 10, 12, and 13
A/AC.249/WP.33	Proposal submitted by Japan for article 59
A/AC.249/WP.34	Proposal submitted by the United States for articles 8 to 10 and 13
A/AC.249/WP.35	Proposal submitted by Singapore for article 47(2)
A/AC.249/WP.36	Proposal submitted by Israel for article 53(2)
A/AC.249/WP.37	Proposal submitted by Germany for article 44(a)
A/AC.249/WP.38	Proposal submitted by the United Kingdom for article 6
A/AC.249/WP.39	Proposal submitted by the United States for articles 2 and 4
A/AC.249/WP.40	Proposal submitted by Singapore on additions to the compilation of proposals on judicial cooperation and enforcement
A/AC.249/WP.41	Proposal submitted by the United States on offences against the integrity of the Court
A/AC.249/WP.42	Proposal submitted by Israel for articles 10(2), 11(2) and (3) and 16(1)
A/AC.249/WP.43	Proposal submitted by Algeria, Egypt, Jordan, Kuwait, the Libyan Arab Jamahiriya and Qatar on the organization of the Court
A/AC.249/WP.44	Proposal submitted by Algeria, Egypt, Jordan, Kuwait, the Libyan Arab Jamahiriya and Qatar for article 47
A/AC.249/WP.45	Proposal submitted by Finland for articles 28 and 29
A/AC.249/WP.46	Proposal submitted by the Netherlands for article 47
A/AC.249/WP.47	Proposal submitted by Trinidad and Tobago for article 6
A/AC.249/WP.48	Proposal submitted by Japan on the definition of war crimes
A/AC.249/WP.49	Proposal submitted by New Zealand for article 2 bis
A/AC.249/WP.50	Proposal submitted by Denmark for article 20

A/AC.249/WP.51 Proposal submitted by Singapore for article 23

A/AC.249/WP.52 Proposal submitted by Belize for article 20

14. For the purpose of organizing the proposals in a coherent and manageable manner, interested States were encouraged to conduct consultations. For those purposes informal groups were formed on the following subjects: procedural questions (chaired by Ms. Silvia A. Fernández de Gurmendi, Argentina); international cooperation and judicial assistance (chaired by Mr. Pieter Kruger, South Africa); organizational questions (chaired by Ms. Zaitun Zawiyah Bt. Puteh and Mr. Kian Kheong Wong, Malaysia); and penalties (chaired by Mr. Rolf Einar Fife, Norway). The informal group on the general principles of criminal law continued its work (chaired by Mr. Per Saland).

15. At the 45th meeting, on 27 August 1996, the chairmen of the respective informal groups reported on the outcome of their work.

16. At the same meeting, the Committee decided to incorporate into its report, together with the draft articles prepared by the International Law Commission, the compilations of proposals produced by the informal groups, namely, procedural questions, fair trial and rights of the accused (A/AC.249/CRP.14); international cooperation and judicial assistance (A/AC.249/CRP.17); organization, composition and administration of the Court (A/AC.249/CRP.11); general principles of criminal law (A/AC.249/CRP.13); and penalties (A/AC.249/CRP.13/Add.1). The incorporation into the report of the above-mentioned compilations was done on the understanding that they did not represent texts agreed upon among delegations, nor did they necessarily represent the final position of the delegations which submitted such proposals. The compilations were not exhaustive and the proposals therein contained had not necessarily been discussed in the informal groups.